

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID GRONER)	
Claimant)	
VS.)	
)	Docket No. 255,434
FOX CONSTRUCTION COMPANY)	
Respondent)	
AND)	
)	
SAFECO/AMERICAN STATES INSURANCE)	
COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the July 18, 2000 preliminary hearing Order entered by Administrative Law Judge Steven J. Howard.

ISSUES

This is a claim for a series of micro-traumas and accidents from December 1, 1999, through March 7, 2000. After conducting a preliminary hearing on July 13, 2000, Judge Howard granted claimant's request for medical treatment.

Respondent and its insurance carrier contend Judge Howard erred. They argue that claimant's present back problems were probably caused on February 22, 2000, when claimant struck a cow with his truck. Conversely, claimant contends that he injured his back while operating heavy equipment for respondent and that the preliminary hearing Order should be affirmed.

The only issue before the Appeals Board on this review is whether claimant either injured or aggravated his back while working for respondent from December 1999 through March 7, 2000.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the file compiled to date and considering the parties' arguments, the Appeals Board finds that the preliminary hearing Order should be affirmed.

2. In June 1992, claimant injured his back while working for respondent and underwent back surgery for an L4-5 herniated disc. After recovering from surgery, claimant returned to work for respondent as a heavy equipment operator.

3. In 1999, claimant began experiencing increased back symptoms and in December sought medical treatment from his family doctor. Claimant's symptoms gradually progressed and he began having pain running down his left leg. That symptom began on February 25, 2000, and coincided with claimant operating a rubber tire loader, which is an older piece of equipment that required claimant to twist and turn more than usual. Because of his back symptoms, claimant took a week off work. Claimant then returned to work for two days until March 7, 2000, when his symptoms progressed to the point that he could hardly walk.

4. Claimant is now diagnosed as having a large herniated disc at L4-5, acute L5 left lumbar radiculopathy, and a protruding disc fragment at L5-S1.

5. The Appeals Board finds that claimant aggravated and/or injured his back through March 7, 2000, while operating heavy equipment for respondent.

6. The Board has considered respondent and its insurance carrier's argument that claimant probably injured his back on February 22, 2000, when he struck a cow with his truck. But the Appeals Board concludes that claimant did not injure his back in that accident as it was a minor incident. Claimant was only going 15 to 20 miles per hour before hitting his brakes. Claimant's truck sustained only minor damage and the cow walked away without any apparent injury. Further, claimant testified that he was wearing his seat belt and that the incident did not hurt his back. The argument that claimant injured his back in that incident borders on being disingenuous.

7. An injury is compensable under the Workers Compensation Act even when the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates a preexisting condition.²

8. For preliminary hearing purposes, claimant has established that he either aggravated or injured his back by a series of traumas through March 7, 2000, while working for respondent. Therefore, claimant is entitled to receive workers compensation benefits for his back.

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

9. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the July 18, 2000 preliminary hearing Order entered by Judge Howard.

IT IS SO ORDERED.

Dated this ____ day of August 2000.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Clifford K. Stubbs, Lenexa, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1999 Supp. 44-534a(a)(2).